

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

BMC SOFTWARE, INC.,

Plaintiff,

v.

SERVICENOW, INC.,

Defendant.

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CASE NO. 2:14-CV-903-JRG

**ORDER**

The Court held a hearing on May 26, 2015, regarding the following motions by Plaintiff BMC Software, Inc. (“BMC”) and Defendant ServiceNow, Inc. (“ServiceNow”): BMC’s Motion to Strike ServiceNow’s Invalidity Contentions (Dkt. No. 58), ServiceNow’s Motion to Strike BMC’s Infringement Contentions or in the Alternative, to Compel BMC to Serve Compliant Infringement Contentions or Preclude Reliance on Source Code (Dkt. No. 61), BMC’s Motion to Compel ServiceNow to Serve Supplemental Initial Disclosures (Dkt. No. 62), ServiceNow’s Motion to Compel BMC to Answer Interrogatories 1, 2, 3, and 12 and Produce Relevant Documents (Dkt. No. 65), BMC’s Motion to Compel ServiceNow to Comply with Order regarding E-Discovery (Dkt. No. 68), and BMC’s Motion to Compel Certain Source Code Discovery (Dkt. No. 70). This Order summarizes and memorializes the Court’s rulings at that hearing:

- (1) In light of the parties’ representations in their Joint Notice Regarding Hearing (Dkt. No. 96), BMC’s Motion to Compel ServiceNow to Serve Supplemental Initial Disclosures (Dkt. No. 62), ServiceNow’s Motion to Compel BMC to

Answer Interrogatories 1, 2, 3, and 12 and Produce Relevant Documents (Dkt. No. 65), and BMC's Motion to Compel ServiceNow to Comply with Order regarding E-Discovery (Dkt. No. 68) are **DENIED AS MOOT**;


(2) BMC's Motion to Strike ServiceNow's Invalidity Contentions (Dkt. No. 58) and ServiceNow's Motion to Strike BMC's Infringement Contentions or in the Alternative, to Compel BMC to Serve Compliant Infringement Contentions or Preclude Reliance on Source Code (Dkt. No. 61) are **DENIED WITHOUT PREJUDICE**;

(3) BMC's Motion to Compel Certain Source Code Discovery (Dkt. No. 70) is **GRANTED-IN-PART** as to BMC's request for additional source code production from ServiceNow and **DENIED-IN-PART AS MOOT** in all other respects in light of the parties' representations in their Joint Notice Regarding Hearing (Dkt. No. 96). ServiceNow is **ORDERED** to produce by 5:00 P.M. CST on Wednesday, June 3, 2015, a static archive for each particular release of its source code that contains the complete source code that particular release as of the date that particular release first went public.

(4) Within thirty (30) days of ServiceNow's supplemental production of source code pursuant to this Order, the parties are **ORDERED** to file a Joint Status Report advising the Court of any remaining discovery issues relating to source code production. The Joint Status Report shall also disclose the time BMC needs, if any, to supplement its Infringement Contentions if such supplementation is found necessary.

- (5) The parties are further **ORDERED** to meet and confer regarding the narrowing of asserted patent claims and prior art references, using their best efforts.

**So ORDERED and SIGNED this 27th day of May, 2015.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE